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Pro Se Litigant

FILED
U.S. DISTRICT COURT

2016 DEC -1 A 10:00

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RUSSELL G. GREER,

Plaintiff

v.

GARY R. HERBERT, in his official capacity as Governor of the State of Utah; **SEAN D. REYES**, in his official capacity as Attorney General of the State of Utah;

SIM S. GILL, in his official capacity as District Attorney of the City and County of Salt Lake; **JACKIE BISKUPSKI**, in her official capacity as Mayor of the City of Salt Lake; **BEN McADAMS**, in his official capacity as Mayor of the County of Salt Lake; **KATHY BERG**, in her official capacity as Director of the Division of Commerce; **JAMES ALLRED**, in his official capacity as Business Licensing Manager for the City of Salt Lake; **ROLEN YOSHINAGA**, in his official capacity as Director of Planning and Development for the County of Salt Lake,

Defendants

**MOTION TO ALLOW PROOF OF
SERVICE TO BE FILED WITH THE
COURT WITHOUT ORIGINAL
SUMMONS PURSUANT TO FRCP 4**

Case No.: 2:16cv01067

Judge: Dustin B. Pead

6. Per Federal Rules of Civil Procedure Rule 4(e), service is made and completed when the summons and the complaint is either (a) delivered to the individual personally, (b) left at individual's place of dwelling with a suitable person of age, or (c) delivered to an agent appointed by law to receive a summons. That rule was made complete when Stewart served individuals personally or made service to their agent. *Id.*
7. Furthermore, service was made well before the 90 day statutory period of serving defendants. FRCP 4(m). Therefore, defendants or any court clerk cannot complain that service was not made because Stewart has signed with his oath on the proof of service for each defendant the time, place and person to whom service was made to and thus the rule has been made complete.

RULE FRCP 4(l) IS VAGUE

8. Nowhere in the rules section does it state that an original summons must be turned in with the proof of service. In fact, the FRCP (l) states that only the proof of service must be made to the court. Plaintiff read this rule and instructed his process server accordingly. The statute is too vague to list any specifics or to list any possible errors. Turning to resources to clarify the confusion, Greer did not find anything that states an original summons must be turned in with the proof of service. The Federal Rules of Civil Procedure Manual, in its mention of Rule 4(l), states that a process server must submit an affidavit stating that service was made. It reads, "A process server's affidavit establishes a presumption of service." Federal Rules of Civil Procedure Manual, Rosenthal, Levi & Rabiej. Juris Publishing (2015). The website, Serve-Now, a well-regarded website for process

servers, when explaining what an Affidavit of Service is, doesn't mention a summons being with a proof of service. It only mentions what a proof of service is. What is an Affidavit of Service? (2011) (<https://www.serve-now.com/articles/133/affidavit-of-service>).

9. To go to one last source of information, Plaintiff went to the Utah Courts website (utcourts.gov) and found nothing about original summons being filed with the proof of service. A cursory search in the Utah Code did not yield any results either. Therefore, Plaintiff and his Process Server served the defendants in good faith and followed the rules to the best of their understanding. The vagueness of the rules should not be held against Plaintiff for doing his best effort.

UNDUE HARDSHIP

10. Lastly, to serve the complaint and summons all over again would be an undue hardship on both Plaintiff and his process server. It is an undue hardship given the expense of printing off 8 copies of 37 pages. Also, the defendants are spread out over a two mile radius and would be tiresome for the process server who rides a bike. Further, many of the agents assigned to the defendants were rude to the process server.
11. Logically speaking, it would not make any sense to serve the defendants all over again since they were properly served, as previously established. It appears that some of the defendants have begun drafting responses to the Complaint. For instance, the Chief Policy Advisor with the District Attorney's office, Darcy Goddard, looked at Plaintiff's LinkedIn profile. This presumes that she or

somebody with Defendant Gill's office has begun a response. Therefore, sending them a Complaint to which they already have would cause confusion.

PRAYER FOR RELIEF

12. Plaintiff apologizes to the Court for not knowing the traditional filing procedure and therefore hopes that the Court can make this allowance. Plaintiff promises that he will seek clarifications for any procedure that he is not familiar with in the future.

Dated: November 30, 2016

RUSSELL G. GREER

PRO SE LITIGANT

By: /s/Russell G. Greer/

A handwritten signature in black ink, appearing to read 'Russell G. Greer', with a long horizontal flourish extending to the right.

CERTIFICATE OF SERVICE

I certify that on November 30, 2016, I served a copy of the MOTION TO ALLOW PROOF OF SERVICE TO BE FILED WITH THE COURT WITHOUT ORIGINAL SUMMONS PURSUANT TO FRCP 4 on the following via electronic mail. Since defendants have not given Greer direct email addresses, Greer sends the Motion to the following email addresses in good faith and because he has communicated with defendants' agents on the following email addresses before:

Sean Reyes via Yvette Rhodes: yrhodes@utah.gov

Governor Gary Herbert. His office said, on 11/22/2016, that the Attorney General's Office would handle the response so the email to Yvette Rhodes will count towards the governor's office as well.

Jackie Biskupski via mayor@slc.gov

Kathy Berg via kberg@utah.gov

Rolen Yoshinaga via Chris Preston: rpreston@slco.org

Sim S. Gill via districtAttorney@slco.org

Ben McAdams via mayor@slco.org

James Allred via james.allred@slcgov.com

Exhibit

for the
District of Utah

Russell G. Greer

Plaintiff(s)

V.

Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga

Defendant(s)

Civil Action No. 2:16cv01067

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Ben McAdams
Mayor of Salt Lake County
2001 State St
N2100
Salt Lake City, Utah 84190

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Russell G Greer
689 Vine Street
Murray, Utah 84107

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:16cv01067

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) Ben McAdams
 was received by me on (date) 11/20/16.

☐ I personally served the summons on the individual at (place) _____
 on (date) _____; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
 _____, a person of suitable age and discretion who resides there,
 on (date) _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual) Stephanie Withers, who is
 designated by law to accept service of process on behalf of (name of organization) Mayor's office
at 9:23am on (date) 11/21/16; or


☐ I returned the summons unexecuted because _____; or

☐ Other (specify): _____

My fees are \$ 0 for travel and \$ 7.50 for services, for a total of \$ ~~0.00~~ 7.50.

I declare under penalty of perjury that this information is true.

Date: 11/21/16


 Server's signature

Stewart Greer / courier
 Printed name and title

261 wayne Ct. SLC UT
 Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Utah

Russell G. Greer

Plaintiff(s)

v.

Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie
Biskupski, Ben McAdams, Kathy Berg, James Allred,
Rolen Yoshinaga

Defendant(s)

Civil Action No. 2:16cv01067

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Gary R. Herbert
350N State Street
#200
Salt Lake City UT. 84114

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Russell G Greer
689 Vine Street
Murray, Utah 84107

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:16cv01067

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (name of individual and title, if any) Gary Herbert
 was received by me on (date) 11/20/16.

☐ I personally served the summons on the individual at (place) _____
 on (date) _____; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
 _____, a person of suitable age and discretion who resides there,
 on (date) _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual) Suzette Alles, who is
 designated by law to accept service of process on behalf of (name of organization) Office of the Governor
at 12:10pm on (date) 11/21/16; or


☐ I returned the summons unexecuted because _____; or

☐ Other (specify): _____

My fees are \$ 0 for travel and \$ 7.50 for services, for a total of \$ ~~0.00~~ 7.50.

I declare under penalty of perjury that this information is true.

Date: 11/21/16


 Server's signature

Stewart Greer / courier
 Printed name and title

261 Wayne Ct. Sec UT.
 Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Utah

Russell G. Greer

Plaintiff(s)

v.

Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga

Defendant(s)

Civil Action No. 2:16cv01067

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Sean D. Reyes
350 N State Street
#230
Salt Lake City UT 84114

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Russell G Greer
689 Vine Street
Murray, Utah 84107

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:16cv01067

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) Sean D. Reyes
 was received by me on (date) 11/20/16.

☐ I personally served the summons on the individual at (place) _____
 on (date) _____; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
 _____, a person of suitable age and discretion who resides there,
 on (date) _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual) CECILIA LESMES, who is
 designated by law to accept service of process on behalf of (name of organization) UTAH ATTORNEY GENERAL'S OFFICE
at 12:04 pm on (date) 11/21/16; or

☐ I returned the summons unexecuted because _____; or

☐ Other (specify): _____

My fees are \$ 0 for travel and \$ 7.50 for services, for a total of \$ 0.00 7.50.

I declare under penalty of perjury that this information is true.

Date: 11/21/16

[Signature]
 Server's signature

Stewart Greer / courier
 Printed name and title

261 Wayne Ct. SLC UT.
 Server's address

Additional information regarding attempted service, etc:

for the
District of Utah

Russell G. Greer

Plaintiff(s)

V.

Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga

Defendant(s)

Civil Action No. 2:16cv01067

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

St

Jackie Biskupski
451 s State
Salt Lake City UT.
84114

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Russell G Greer
689 Vine Street
Murray, Utah 84107

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:16cv01067

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for (name of individual and title, if any) Jakie Biskupski **RECEIVED**
 was received by me on (date) 11/20/16 **NOV 21 2016**

CITY RECORDER

☐ I personally served the summons on the individual at (place) _____
 _____ on (date) _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
 _____, a person of suitable age and discretion who resides there,
 on (date) _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual) Janyce Fowles, who is
 designated by law to accept service of process on behalf of (name of organization) Salt Lake City Recorder
11:00 am on (date) 11/21/16 ; or

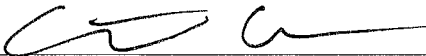
☐ I returned the summons unexecuted because _____ ; or

☐ Other (specify): _____

My fees are \$ 0 for travel and \$ 7.50 for services, for a total of \$ 0.00 7.50.

I declare under penalty of perjury that this information is true.

Date: 11/21/16


 Server's signature

Stewart Greer / courier
 Printed name and title

261 wayne ct slc ut.
 Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Utah

Russell G. Greer

Plaintiff(s)

v.

Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga

Defendant(s)

Civil Action No. 2:16cv01067

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

nty Kathy Berg
160 e 300 s 2nd floor
Salt Lake City UT.
84114

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Russell G Greer
689 Vine Street
Murray, Utah 84107

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:16cv01067

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) Kathy Berg
 was received by me on (date) 11/20/16.

☐ I personally served the summons on the individual at (place) _____
 on (date) _____; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
 _____, a person of suitable age and discretion who resides there,
 on (date) _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual) Leah Lindstrom, who is
 designated by law to accept service of process on behalf of (name of organization) Div of Corporations
at 8:35 am on (date) 11-21-2016; or

☐ I returned the summons unexecuted because _____; or

☐ Other (specify): _____

My fees are \$ 0 for travel and \$ 7.50 for services, for a total of \$ 0.00 7.50

I declare under penalty of perjury that this information is true.

Date: 11/21/16

[Signature]
 Server's signature

Stewart Greer / couvier
 Printed name and title

261 wayne ct. Salt Lake City
 Server's address

Additional information regarding attempted service, etc:

District of Utah

Civil Action No. 2:16cv01067

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:16cv01067

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) Rolen Yoshinaga
 was received by me on (date) 11/20/16.

☐ I personally served the summons on the individual at (place) _____
 on (date) _____; or

☐ I left the summons at the individual's residence or usual place of abode with (name) _____
 _____, a person of suitable age and discretion who resides there,
 on (date) _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual) Brittany Allen, who is
 designated by law to accept service of process on behalf of (name of organization) Planning & Development
Services at 9:16 am on (date) 11/21/16; or


☐ I returned the summons unexecuted because _____; or

☐ Other (specify): _____

My fees are \$ 0 for travel and \$ 7.50 for services, for a total of \$ ~~0.00~~ 7.50

I declare under penalty of perjury that this information is true.

Date: 11/21/16


 Server's signature

Stewart Greer / courier
 Printed name and title

261 wayne Ct. Salt Lake City
 Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Utah

Russell G. Greer

Plaintiff(s)

v.

Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie Biskupski, Ben McAdams, Kathy Berg, James Allred, Rolen Yoshinaga

Defendant(s)

Civil Action No. 2:16cv01067

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

James Allred
451 S State Street
#225
Salt Lake City, UT 84114

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Russell G Greer
689 Vine Street
Murray, Utah 84107

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 2:16cv01067

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any) James Alved
 was received by me on (date) 11/20/16
☒ I personally served the summons on the individual at (place) Dept. of community and economic Development, 451 S State Rm # 225
6:46 am on (date) 11/21/16; or
☐ I left the summons at the individual's residence or usual place of abode with (name) _____, a person of suitable age and discretion who resides there,
 on (date) _____, and mailed a copy to the individual's last known address; or
☐ I served the summons on (name of individual) _____, who is
 designated by law to accept service of process on behalf of (name of organization) _____
 on (date) _____; or
☐ I returned the summons unexecuted because _____; or
☐ Other (specify): _____

My fees are \$ 0 for travel and \$ 7.50 for services, for a total of \$ 0.00-7.50.

I declare under penalty of perjury that this information is true.

Date: 11/21/16

Stewart Greer
 Server's signature

Stewart Greer / Carrier
 Printed name and title

261 wayne Ct SLC UT.
 Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the
District of Utah

Russell G. Greer

Plaintiff(s)

v.

Gary R. Herbert, Sean D. Reyes, Sim S. Gill, Jackie
Biskupski, Ben McAdams, Kathy Berg, James Allred,
Rolen Yoshinaga

Defendant(s)

Civil Action No. 2:16cv01067

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* _____

Salt Lake City, Utah 84190

Sim S. Gill
2001 South State St.
S3-600
Salt Lake City, Utah 84190

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Russell G Greer
689 Vine Street
Murray, Utah 84107

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

